

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
C.A. No.: 1:24-cv-00057

FILED
ASHEVILLE, NC

DEC 31 2024

U.S. DISTRICT COURT
W. DISTRICT OF N.C.

NEW YORK LIFE INSURANCE AND
ANNUITY CORPORATION,

Interpleader Plaintiff |
Counterclaim Defendant,

v.

JOYCE DAVIS, REBECCA ANN
ELLISON, DONNA KAYE LEONARD,
VANDALYN DIANE ROSE, MARIA
ALAINA DIRHOLD,

Interpleader Defendants,

v.

PHILLIPS FINANCIAL GROUP, LLC,
NYLIFE SECURITIES LLC,

Counterclaim Defendants.

CONSENT
JUDGMENT

This matter is before the Court upon presentation to the Court of a proposed Consent Judgment submitted by the parties. The parties having agreed upon resolution of this matter prior to a trial on the merits, having considered the facts and applicable law, and having agreed to the entry of this Consent Judgment, the Court makes the following:

FINDINGS OF FACT:

1. Plaintiff New York Life Insurance and Annuity Corporation (“NYLIAC”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York.

2. Defendant Joyce Davis (“Joyce”) and Defendant Maria Dirhold (“Maria”) are citizens and residents of McDowell County, North Carolina.

3. Defendant Rebecca Ann Ellison (“Rebecca”) is a citizen and resident of the State of Virginia.

4. Defendant Donna Kaye Leonard (“Donna”) is a citizen and resident of the State of Georgia.

5. Defendant Vandalyn Diane Rose (“Vandalyn”) is a citizen and resident of Burke County, North Carolina.

6. Counterclaim Defendant Phillips Financial Group, LLC (“Phillips Financial Group”) is a North Carolina limited liability company with a principal office and registered office at 195 S. Main Street, Suite A, Marion, NC 28752

7. Proposed Counterclaim Defendant NYLIFE Securities LLC (“NYLIFE Securities”) is a Delaware limited liability company registered to do business in the State of North Carolina and a registered broker-dealer with the Securities and Exchange Commission. Its principal office is located at 51 Madison Avenue, New York, NY 10010. NYLIFE Securities is a named Counterclaim Defendant in Joyce

and Maria's Proposed Amended Counterclaims, as to which leave to file has not yet been granted.

8. On February 20, 2024, Plaintiff brought this action in interpleader concerning the proceeds of an annuity issued by the Plaintiff to Van Harold Davis ("the Davis Annuity"), and seeking leave of Court to deposit the proceeds of the annuity with the Court and be dismissed from the action.

9. On or about March 25, 2024, Plaintiff did, in fact, tender the Interpleader Deposit in the amount of \$666,876.24 with the Court, which continues to be held as disputed funds ("the Disputed Interpleader Funds").

10. Defendants Joyce, Maria, Rebecca, Donna, and Vandalyn have each filed crossclaims seeking declaratory relief as to ownership of the Disputed Interpleader Funds. Each Defendant has also asserted counterclaims against NYLIAC arising out of the same transaction or occurrence that is the subject matter of the Complaint for Interpleader, and NYLIAC has moved to dismiss all counterclaims.

11. Joyce and Maria have also asserted related counterclaims against Phillips Financial Group, and have sought leave of court to assert additional counterclaims against NYLIFE Securities.

12. The parties to this action have now resolved all disputes and claims among them related to the Disputed Interpleader Funds, including such claims as

have been asserted in this action or that arose out of the same transactions and occurrences that are the subject of this action and, therefore, could have been asserted. The Parties have also agreed to the form of a Stipulation of Voluntary Dismissal of all Claims with Prejudice.

13. The parties hereby consent and agree to entry of this Consent Judgment without further notice and waive service thereof.

14. The parties expressly waive their rights to appeal or otherwise move for relief from this Consent Judgment.

Based on the foregoing FINDINGS OF FACT the Court makes the following

CONCLUSIONS OF LAW:

15. This is an action in interpleader brought pursuant to 28 U.S.C. § 1332 and Fed. R. Civ. Pro. 22.

16. The Court has personal jurisdiction over all of the parties.

17. The Court has subject matter jurisdiction over the interpleader claim because diversity of citizenship exists between the Plaintiff and the Defendants and the amount in controversy exceeds \$75,000.00. The Court may exercise supplemental jurisdiction over the Counterclaims, which are compulsory and arise out of the same transaction or occurrence that is the subject matter of the Complaint for Interpleader and the several Crossclaims for declaratory relief.

18. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391, 1397.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Disputed Interpleader Funds shall be disbursed by the Court as follows:

- a. A Principal distribution of the Disputed Interpleader Funds in the amount of \$400,000 to Rebecca, Donna, and Vandalyn;
- b. All remaining Principal of the Disputed Interpleader Funds to Joyce Davis;
- c. If any taxable income and/or gain is associated with the forgoing Principal distributions, it shall be prorated among the parties in accordance with each of her share of the distributed Principal;
- d. Interest accrued on the Disputed Interpleader Funds between March 26 - August 20, 2024, in the amount of \$8,605.85, to Joyce Davis;
- e. All remaining interest accrued on the Disputed Interpleader Funds, between August 21, 2024 through the date of distribution, to be prorated fifty percent (50%) to Rebecca, Donna, and Vandalyn, and fifty percent (50%) to Joyce;

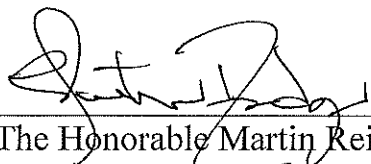
- f. The \$400,000 distribution under paragraph 1(a) and any interest distributed to Rebecca, Donna, and Vandalyn under paragraph 1(e) shall be made payable to Rebecca Ann Ellison, Donna Kaye Leonard, and Vandalyn Diane Rose, one-third each, and mailed to Timothy D. Swanson, Esq., P.O. Drawer 2428, Hickory, NC 28603; and
- g. All funds distributable to Joyce Davis under this paragraph 1 shall be made payable to Joyce Davis and mailed to Heather Whitaker Goldstein, The Van Winkle Law Firm, 11 North Market Street, Asheville, NC 28801.

2. Within five (5) business days of disbursement of the Disputed Interpleader Funds, the Parties shall file the agreed upon Stipulation of Voluntary Dismissal of all Claims with Prejudice.

3. All parties are permanently enjoined from instituting any action or proceeding against any other party in this or any other Court arising out of, or related to, the Davis Annuity.

4. Each party shall bear its or her own costs and attorneys' fees.

THIS, the 31 ^{December} day of ~~November~~, 2024.


The Honorable Martin Reidinger
United States District Court Judge

CONSENTED TO AND RESPECTFULLY SUBMITTED:

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/ Chelsea Kay Barnes

Chelsea Kay Barnes

380 Knollwood St., Suite 530

Winston-Salem, NC 27103

336-774-3397

Attorneys for New York Life Insurance and Annuity Corporation

THE VAN WINKLE LAW FIRM

/s/ Heather Whitaker Goldstein

Heather Whitaker Goldstein, NC Bar No. 26194

11 N. Market Street

Asheville, NC 28801

Telephone: 828-258-2991

Facsimile: 828-257-2773

Attorneys for Joyce Davis and Maria Alania Dirhold

YOUNG MORPHIS BACH TAYLOR LLP

/s/ Timothy D. Swanson

Timothy D. Swanson

P. O. Drawer 2428

Post Office Drawer 2428

Hickory, NC 28603

828/322-4663

Attorneys for Rebecca Ellison, Donna Leonard, Vandalyn Rose

PARKER, POE, ADAMS & BERNSTEIN LLP

/s/ Nicholas H. Lee

Nicholas H. Lee, N.C. Bar No. 47885

620 South Tryon Street, Suite 800

Charlotte, NC 28202

Telephone: (704) 335-9876

Facsimile: (704) 334-4706
nicholaslee@parkerpoe.com
Attorney for Phillips Financial Group, LLC